

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LITEL TELECOMMUNICATIONS)
CORPORATION FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE INTRA-) CASE NO. 10090
STATE LONG DISTANCE TELEPHONE SERVICE TO THE)
PUBLIC IN THE COMMONWEALTH OF KENTUCKY AND)
FOR THE ESTABLISHMENT OF RATES)

O R D E R

On November 18, 1987, Litel Telecommunications Corporation ("Litel") filed an application for a Certificate of Public Convenience and Necessity as a WATS reseller and non-dominant carrier to provide interLATA and intraLATA telephone service between points within the Commonwealth of Kentucky. On December 2, 1987, Litel filed a proposed tariff. Litel was requested to supply additional information by Order dated December 29, 1987. Its response was filed on January 15, 1988.

Litel was incorporated under the laws of the State of Delaware by Certificate of Incorporation filed on December 7, 1983, in the name of Litel, Inc. On October 15, 1984, Litel, Inc., changed its name to Litel Telecommunications Corporation. Litel is authorized to do business in Kentucky.

Litel is a wholly-owned operating subsidiary of LCI Communications, Inc. ("LCI"). Litel and LCI were organized under the laws of Delaware for the purpose of developing a Midwestern

fiber optic telecommunications network capable of providing voice, data and video transmissions.

Litel proposes to offer switched and dedicated digital long distance telecommunications services for Kentucky residential users, businesses and other carriers with the main emphasis on businesses and other carriers. The services would include voice, data, and video transmission. The service will be offered to northern Kentucky by access through Cincinnati Bell and to the Louisville and Lexington areas through resale transport services.

On December 21, 1987, Litel Acquisition Corporation ("LAC") filed a motion for full intervention and for other stated relief. In its motion, LAC described transactions by which it proposes to acquire Litel and requested that the Commission enter an Order granting LAC the right to succeed to whatever interest that the applicant, Litel, might have at the time of the acquisition.

LAC is a Delaware Corporation authorized to do business in Kentucky.¹ Telwes, Inc., a wholly owned subsidiary of LAC, has entered into an agreement of merger² with LCI Communications, Inc., the parent corporation of Litel. Pursuant to the merger agreement and a series of steps described in LAC's motion, ownership of Litel will, at some future time, vest in the shareholders of LAC. LAC anticipates that some authority, granted

¹ At this time LAC is not subject to the jurisdiction of this Commission. Litel will clearly be subject to KRS 278.020(4) at the time of the proposed acquisition. Thus, Commission approval is required.

² Exhibit C to LAC's motion, supplemented by Exhibit J, which reflects an amendment to the agreement.

to Litel, should then be transferred to LAC pursuant to KRS 278.020(4). LAC then intends to change its name to Litel Communications Corporation. LAC has requested that the Commission issue an Order essentially granting it the authority to succeed to any interest that Litel may have at the termination of this proceeding. This Order grants LAC's motion for intervention and grants LAC the right to succeed to Litel's interest.

Litel's original application requested authority to provide resale of telecommunication services and treatment of Litel as a WATS reseller. In order for a utility to obtain WATS reseller status, all traffic must be transported via transmission facilities leased from certified carriers under the appropriate tariffs.

Litel intends to utilize its own network facilities to carry Kentucky intrastate traffic.³ Litel also plans to construct a microwave facility in Louisville, Kentucky. Because of the manner in which Litel will provide services within Kentucky, Litel is, by definition, a facilities-based carrier.⁴

As a facilities-based carrier, Litel will not be authorized to provide intraLATA service.⁵ Therefore, Litel should modify its

³ Litel's response to Commission information request of December 29, 1987, question 5.

⁴ In its response to the information request dated January 15, 1988, Litel requested to amend its application to be considered as a facilities-based carrier.

⁵ IntraLATA competition has been deferred in Kentucky. See Order in Administrative Case No. 273, May 25, 1984, at page 15.

tariffs, and possibly its service offerings, to reflect this restriction. If Litel intends to offer services capable of intraLATA call completion,⁶ it is suggested that Litel review Case Nos. 9874, 9902, and 9928⁷ in which the Commission placed certain restrictions and reporting requirements on other facilities-based carriers and indicated its intention to initiate a generic proceeding to investigate the issue of compensation for intraLATA traffic. Litel, or its successor, will be made a party to the generic proceeding when such case is established.

The Commission's staff has reviewed Litel's proposed tariff and has several concerns, most of which could probably be addressed on an informal basis. Therefore, it is suggested that Litel seek an informal conference prior to filing a tariff and beginning service.

FINDINGS AND ORDERS

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

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- ⁶ Some proposed services of Litel (e.g., dedicated LightCom) involve the use of special access. In situations where call screening is not provided by the Local Exchange Company providing access, the potential for unauthorized intraLATA service exists.
- ⁷ AT&T Tariff Filing Proposing MEGACOM/MEGACOM 800 Service; US Sprint's Tariff Filing Proposing to Rename Its WATS Products, Change Billing Calculations Methods for WATS, Introduce ULTRAWATS, Travelcard, Direct 800 and Ultra 800; MCI's Tariff Filings to Establish Prism Plus, Prism I, and Prism II Services.

1. LAC should be granted intervenor status in this matter pursuant to 807 KAR 5:001, Section 3(8).

2. LAC's petition for confidential treatment of Exhibit F to its motion should be granted.

3. Supporting documentation filed with LAC's motion indicates that LAC possesses the financial, technical and managerial abilities to operate Litel and provide reasonable service after the consummation of the proposed merger.

4. LAC should be permitted to succeed to Litel's interest at the time of the proposed acquisition.

5. Litel has the financial, technical and managerial abilities to provide reasonable service.

6. Litel should be granted authority to provide intrastate interLATA telecommunications services to the public. The grant is expressly conditioned upon Litel's compliance with Orders in Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Market in Kentucky, and Case No. 8838, An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities Pursuant to Changes to be Effective January 1, 1984, as they apply to interLATA carriers. This includes, but is not limited to, the following: provision of jurisdictional reports consistent with the Commission-approved methodology and maintenance of complete, detailed and accurate records, workpapers and supporting documentation for these jurisdictional reports for one year, and provision of Universal Local Access Services Tariff

channel reports to the Commission and South Central Bell Telephone Company, as pool administrator.

7. Litel should not be authorized to provide intraLATA services to the public.

8. Litel should conform its intrastate offering of service to the provisions of the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273.

IT IS THEREFORE ORDERED that:

1) Litel be, and it hereby is, authorized to provide intrastate interLATA telecommunications services to the public, subject to the acceptance of Litel's tariff.

2) Litel is not authorized to provide intrastate intraLATA services to residents of Kentucky.

3) Litel shall conform its intrastate offering of service to the provisions of the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273.

4) LAC's motion is granted in its entirety.

5) Litel having been granted authority by this Commission, approval is hereby granted for the transfer of ownership and control of Litel to LAC in the manner set forth in LAC's motion.

6) Within 30 days of the date of this Order Litel shall file its tariff sheets in accordance with 807 KAR 5:001.

7) Within 30 days of the proposed transfer, Litel Communications Corporation shall file notice of the transfer, and an adoption notice, as required by 807 KAR 5:011, Section 11.

Done at Frankfort, Kentucky, this 18th day of March, 1988.

PUBLIC SERVICE COMMISSION

Richard D. Weman, Jr.
Chairman

Robert M. Davis
Vice Chairman

James P. Williams, Jr.
Commissioner

ATTEST:

Executive Director